IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.Rev.Pet.No. 446 of 1999()

CC.50/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

REVN. PETITIONER P.W.2:

THAYYIL MOIDEEN HAJI, MELATTUR MANAZHI
EDAYATHUR P.O., MALAPPURAM.

BY ADV. SRI.V.G.ARUN

RESPONDENTS - COMPLAINANT & ACCSUED:

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1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. POOTHAKKODAN POKKU, SON OF AHAMMEDKUTTY MELATTUR, MANAZHI, MALAPPURAM.

3. DO. MOIDEEN, S/O.KUNHAMEDKUTTY, DO. DO.

4. DO. ALAVIKUTTY, SON OF DO. DO.

5. DO. ASRAF, SON OF POKKU, DO.

BY ADV. SRI.K.M.SATHYANATHA MENON 2 TO 5
BY PUBLIC PROSECUTOR SHRI KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 446 OF 1999

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Dated this the 5th day of February, 2007

O R D E R

Revision petition is filed by P.W.2, who was the de facto complainant in C.C. No.50 of 1993 on the file of the Judicial First Class Magistrate No.II, Perinthalmanna. Revision petition arose from the judgment of acquittal passed by the learned Magistrate by which he acquitted respondents 2 to 5.

2. The case was charge sheeted by the police alleging that respondents 2 to 5 committed offence under Sections 143, 147, 148, 447 and 324 read with 149 IPC. Final report was filed on 8.12.1992. Respondents 2 to 5 appeared on 5.4.1993. Learned Magistrate framed charges under Sections 143, 147, 148, 447 and 324 read with 149 IPC and posted the case for evidence to 2.7.1993. There were number of postings. Finally the case was posted to 22.2.1999. On that day respondents were present. But trial of the case could not take place. Learned Magistrate in view of the decision reported in **Raj Dev**

Sharma v. State of Bihar (AIR 1999 SC 3524) acquitted the accused. Challenging that decision, this Criminal Revision Petition is filed.

3. Principle laid down in **Raj Dev Sharma's case** (supra) was overruled by a Constitutional Bench of the Supreme Court reported in **P. Ramachandra Rao v. State of Karnataka** (AIR 2002 SC 1856). So the acquittal of the accused relying on **Raj Dev Sharma's case** (supra) is unsustainable and liable to be set aside.

In the result, Criminal Revision Petition is allowed. The order under challenge is set aside. Learned Magistrate is directed to take C.C. No.50 of 1993 back to file and dispose of the same in accordance with law.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

5TH FEBRUARY, 2007